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Letter dated 20 March 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached addendum to the report from Portugal submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

Note verbale dated 18 March 2002 from the Permanent Mission of Portugal to the United Nations addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

The Permanent Mission of Portugal to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee and pursuant to its note of 18 January 2002 has the honour to convey a complementary detailed report on the measures undertaken by Portugal to implement Security Council resolution 1373 (2001), presented in accordance with the systematization suggested by the Counter-Terrorism Committee (see enclosure).

Enclosure

Report submitted by Portugal to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

OPERATIVE PARAGRAPH 1

Sub-paragraph 1. (b)
Criminalize the wilful provision or collection, by any means, directly or indirectly, of funds by their nationals or in their territories with the intention that the funds should be used, or in the knowledge that they are to be used, in order to carry out terrorist acts

What are the offences and penalties in your country with respect to the activities listed in this sub-paragraph?

The Portuguese Criminal Code (CC) specifically provides, since March 1995, for the crime of terrorism, in two of its dispositions: Article 300 (entitled "***Terrorist Organisations***") and Article 301 (entitled "***Terrorism***").

Article 300 of the CC provides for the punishment of "*whoever promotes or establishes a terrorist group, organisation or association, adheres thereto or supports it [...]*".

This provision criminalizes, inter alia, the conduct of those who **finance terrorist groups or organisations**.

These crimes are punished with 5 to 15 years of imprisonment, aggravated to 10 to 15 years in the case of the heads of such groups, organisations or associations.

The penalty shall also be aggravated in a third of its limits in case the authors of the crime possess particularly dangerous weapons such as firearms, explosives or nuclear energy.

The mere practice of preparatory acts for the establishment of terrorist groups, which can be understood as encompassing also **the preparatory acts of financing**, shall be punished with 1 to 8 years of imprisonment.

It should be noted that the penalties prescribed can, notwithstanding, be especially attenuated, in case the agent endeavours serious efforts to prevent, or in fact prevents, the establishment of such groups, or informs the authorities about their existence, so as to avoid the practice of crimes.

The Criminal Code also prescribes in its Article 305 that the mere **threat** of practicing a crime, when causing alarm or distraught among the population, shall be punished with imprisonment of up to 2 years or fine of up to 240 days. An amendment to this Article is currently under discussion in the Portuguese Parliament, aiming at raising the maximum limit of imprisonment for up to three years.

Concerning **money laundering**, Decree Law 313/93 was enacted on 15 September 1993, transposing into the Portuguese internal order Council Directive 91/308/EEC, of 10 June, on the prevention of the use of the financial system for the purpose of money laundering, especially money derived from drug trafficking offences.

Afterwards, Decree Law 325/95 was published on 2 December, **enlarging the legal framework on money laundering** to encompass crimes other than drug trafficking.

Decree Law 325/95 establishes both preventive and repressive measures against money laundering and at present also the laundering of other goods derived from the crimes listed therein, namely and expressly the crime of **terrorism** (Article 2).

Following the events of 11 September 2001, two legislative diplomas were published: Act 5/2002 of 11 January 2002, and Act 10/2002 of 11 February 2002 - this legislation improves the existing legal provisions aimed at preventing and punishing the laundering of money derived from criminal activities, **including terrorism**.

In the three diplomas last mentioned (Decree Law 325/95 and Acts 5/2002 and 10/2002) the combat to money laundering and laundering of other profits of criminal activities is made, on the one hand, through the specific criminalization of certain behaviours and, on the other hand, through preventive measures of detection within the financial system or other activities or professions through which the goods or profits derived from criminal activity circulate.

From the measures adopted to prevent money laundering and enable a more efficient criminal investigation and subsequent repression of these crimes, we highlight the following:

- the obligation to identify clients who fulfil certain requisites and to keep the respective identification documents, for a period of 10 years;
- the obligation to, in certain cases, supply documents and the identification of other actors in suspicious financial operations;
- the suspension of operations in case of suspected money laundering;

- the obligation of credit institutions to exercise control over certain bank accounts under suspicion and to communicate their movements, with the possibility of being ordered to freeze such accounts;
- the waiving/exemption from the duty of professional secrecy in typified cases and for the purposes of criminal investigation, if previously authorised by a competent judicial authority;
- the obligation of certain professionals, inter alia notaries, bank workers and other entities which intervene in real estate transactions, to inform authorities about suspicious activities.

As repressive measures, we would underline that are criminally liable, and subject to penalty of imprisonment ranging from one to 12 years, all those who convert, transfer, help, facilitate or dissimulate goods or profits derived from the practice of crimes, **including the crime of terrorism**.

The profits of such crimes, namely of the crime of money laundering, are lost in favour of the State.

We shall also highlight that the provision of false information, refusal to supply documents or obstruction to their collection, by credit institutions and financial societies, also give rise to criminal liability and are punished with six months to three years of imprisonment; this applies, not only to the representatives of such entities, but also to their employees who participate in those acts.

These crimes are punishable in Portugal, even in case the facts which integrate the main action occur outside national territory (Article 2 of Decree Law 325/95, amended by Act 10/2002).

The three legislative instruments last mentioned, besides providing for the adoption of criminal measures, also establish a regime of administrative sanctions for the violation of several of their own provisions (Articles 1 to 13 of Decree Law 325/95 and 14 of Act 5/2002), the financial and other institutions and private individuals acting therein being responsible for the payment of fines.

The amount of these fines ranges from 750 up to 750 000 euros and they can be doubled in case of relapse or reduced to half in case of mere negligence.

Sub-paragraph 1. (c)

Freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities

What legislation and procedures exist for freezing accounts and assets at banks and financial institutions? It would be helpful if States supplied examples of any relevant action taken.

See reply to subparagraph 1 (b).

It should be specifically mentioned that the Portuguese Code of Criminal Procedure (CCP) includes, since 1998 (Act 59/98, of 25 August), the regime provided for under its Article 181, according to which a judge may order the seizure in banks and other credit institutions, of documents, titles, values and any other objects, even if kept in individual lockers, in case he or she has justified reasons to believe they derive from a criminal activity and are of interest to finding the truth or obtaining evidence, even in case they do not belong to the defendant or are not registered in his or her name.

Therefore, long before the events of last September, it was possible in Portugal to freeze assets derived from criminal activities.

The legal instruments referred to in the previous paragraph established, developed and improved measures for combating organised and economic and financial criminality, **including terrorism and money laundering** (Decree Law 325/95). Article 4 of Act 5/2002, entitled "control of bank accounts", now expressly provides for the possibility to freeze bank accounts, pursuant to an order or authorisation by a judge, when necessary to prevent the practice of the crime of money laundering.

In this context, and on an exceptional basis, the law waives the duty of professional secrecy imposed to financial entities (including the respective organs, directors, employees and representatives), allowing them to inform the competent authorities about suspicious financial operations, and to provide such authorities with the respective documents, deposits or assets.

Recently, Act 11/2002, of 16 February, has been published in the Official Gazette, setting up a regime which aims at penalizing the violation of financial sanctions imposed within the United Nations and/or the European

Union. In accordance with this regime, penalties range from three to five years of imprisonment.

In parallel and as a member of the European Union, Portugal applies immediate and directly Community regulations on these matters.

In this regard, it should be highlighted Council Regulation (EC)467/2001, of 6 March 2001, on the **freezing of funds and other financial resources** belonging to any individual or corporate person, entity or organism designated by the Committee of Sanctions to the Taliban and listed in annex to such regulation.

This list of persons and entities has constantly been updated by the following subsequent regulations:

- Council Regulation (EC) 1354/2001, of 04/07/2001;
- Council Regulation (EC) 1996/2001, of 11/10/2001;
- Council Regulation (EC) 2062/2001, of 19/10/2001;
- Council Regulation (EC) 2199/2001, of 12/11/2001;
- Council Regulation (EC) 2373/2001, of 04/12/2001;
- Council Regulation (EC) 2580/2001, of 27/12/2001.

In accordance with these regulations, the liaison authorities on this matter are the General Directorate of Multilateral Affairs of the Ministry for Foreign Affairs and the General Directorate of European Affairs and International Relations of the Ministry of Finances.

Following the events of 11 September, the Portuguese Government (Ministry of Finances) issued an executive order[1] determining the freezing of all financial resources belonging to the persons and entities mentioned in the lists annexed to Regulation 467/2001 and respective amendments.

This order has also provided, for the purpose of implementing Security Council resolution 1373 (2001), for the disclosure by banking systems of the lists of persons and entities suspected of linkage to the terrorist attacks of 11 September, with the view to obtain relevant information for the purpose of investigation, and its communication to the competent authorities.

Further, as member of the Financial Action Task Force against Money Laundering (FATF), Portugal observes all procedures recommended by this task force, in order to avoid that its financial system be used to fund terrorism.

[1] Order 21 175/2001 (2nd series), published in the Official Gazette, II Series, of 11 October 2001.

Sub-paragraph 1. (d)
Prohibit their nationals or any persons and entities within their territories from making any funds, financial assets or economic resources or financial or other related services available, directly or indirectly, for the benefit of persons who commit or attempt to commit or facilitate or participate in the commission of terrorist acts, of entities owned or controlled, directly or indirectly, by such persons and of persons and entities acting on behalf of or at the direction of such persons

What measures exist to prohibit the activities listed in this sub-paragraph?

See replies to subparagraphs 1. (b) and 1. (c).

The transposition into the Portuguese legal system of European Parliament and Council Directive 2001/97/EEC, of 4 December 2001, amending Community Directive 91/308/EEC (transposed by virtue of Decree Law 313/93, of 15 September) is presently underway.

Sub-paragraph 1. (a)
Prevent and suppress the financing of terrorist acts

What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1(b) to (d).

Besides the measures mentioned in the replies to subparagraphs 1 (b) to 1 (d), we should also emphasise the development of *criminal investigation* on these matters and the enhancement of *cooperation with foreign authorities and international judicial bodies* in such field, **as a means to prevent and suppress terrorism and respective financing.**

Concerning **criminal investigation**, we underline that the Portuguese Code of Criminal Procedure (CCP), under its Title III - "Collection of Evidence" – in some instances establishes a **special regime**, less bureaucratic, and sometimes even exceptional, for the crime of terrorism and activities connected therewith.

Naturally, these legal provisions, which aim at preventing and suppressing terrorism in any of its forms, have an impact on the **combat to the financing of terrorism.**
We shall highlight the following norms:

Article 174 (4) of the CCP according to which, in cases of violent or highly organized criminality, inter alia crimes of terrorism, and whenever there are well-founded grounds to believe that is imminent the practice of a crime that puts at great risk the life or physical integrity of any person, criminal police bodies are allowed to pursue "searches and personal searches", thus waiving the need of these to be previously authorised, or presided over, by a judicial entity.
In such cases, the *judicial authorities examine the case upon police intervention*, the steps taken being promptly communicated to the examining magistrate for validation, in the absence of which they shall be void.

Article 177 of the CCP did not allow home searches to be undertaken during the night, in accordance with the principle of inviolability of domicile consecrated as a fundamental right under the Portuguese Constitution. However, the fifth Constitutional Amendment (Constitutional Law 1/2001, of 12 December) opened an **exception** to this regime, allowing that home searches be undertaken during the night in the case of a very limited number of crimes, **including the crime of terrorism** (Article 34 of the Constitution).

Article 187 of the CCP also provides for the "admissibility of telephone tapping" in the collection of evidence. Tapping depends on a judicial order and can be determined only in the case of crimes expressly enunciated in this Article, which includes the **crime of terrorism and violent or highly organised criminality connected therewith**.

In the same line, Act 10/2001, of 25 August, on the **"regime of undercover actions for purposes of crime prevention or criminal investigation"** admits that these actions be used only in the investigation and prevention of the crimes indicated therein, including the crime of **terrorism** and **terrorist organisation**.

The possibility to resort to such measures (tapping and undercover actions) is restricted by the requisite that they be *adequate and proportional to the aims of criminal prevention and repression pursued in any given case and the gravity of the crime under investigation*.

Further, these measures are admitted in the context of international judicial cooperation on criminal matters, and can therefore be undertaken in Portugal by foreign judicial and police authorities, when authorised by the Minister of Justice, and in some instances applying foreign law, as provided for under Act 104/2001,

of 25 August which amended Act 144/99, of 31 August on International Judicial Cooperation (Articles 160-B and 160-C, 145 and 146).

Thus, we conclude that a particular emphasis is put on the criminal investigation of **terrorism**, including **its financing**, the law allowing that exceptional means, not admitted in the investigation of other crimes, can be used.

It is also of relevance in this field Act 21/2000, of 10 August, which defines the "**Organization of Criminal Investigation**" establishing:

- That the *investigation* of crimes of **terrorist organisation, terrorism, money laundering or laundering of other goods or services, document falsification** [...] shall be the **reserved competence of the Judiciary Police** (PJ);
- That the **connection** of the Portuguese criminal police bodies and other national public services with international organisations of cooperation on criminal policing, such as Europol and Interpol, shall be the **specific competence** of the same police corps.

Due regard should also be paid to the Portuguese Internal Security Act (Act 20/87, of 12 June) which considers the ***prevention of violent or highly organised criminality, such as sabotage, espionage and terrorism*** to be one of the State's fundamental tasks in order to ensure the security and tranquillity of the populations, as well as democracy (Article 1).

The various security forces and services work towards the country's internal safety and, in this context, the following bodies are of special relevance: Polícia Judiciária (Judiciary Police – PJ), Serviço de Estrangeiros e Fronteiras (Foreigners and Borders Office – SEF) and Serviço de Informações de Segurança (Security Information Service – SIS).

We shall also underline that the PJ Organic Act (Decree Law 275-A/2000, of 9 November, amended by Act 103/2001 of 25 August), developing the previously mentioned Organisation of Criminal Investigation Act, confers upon this police corps very wide competences on crime prevention (Article 4), criminal investigation (Article 5) including procedural competences (Article 11-A of Act 103/2001) and international cooperation (Articles 6 and 7).

Very wide competences are also given to the Foreigners and Borders Office (SEF) pursuant to SEF Organic Act (Decree Law 252/2000, of 16 October), which charges this body with the task of controlling the entry into, departure from and permanence of foreign and national citizens in Portuguese territory, being also responsible for the implementation and enforcement of a correct immigration policy (Articles 1 and 2). In order to undertake such tasks, this Act also provides for measures such as the cooperation of the Portuguese State with other States and international bodies Portugal is a member of, on these matters (Article 4 (2)).

Police measures are adopted by the various police authorities in the exercise of their competences on the matter of internal security, within the framework of their respective organic laws. In this context, it should be emphasized that the previously mentioned Act 20/87 considers as a **special police measure** the order to terminate the activity of companies, groups, organisations or associations which dedicate themselves to highly organised criminality, namely sabotage, espionage or **terrorism, or to the preparation, training or recruitment of persons for such purposes** (Article 16 (3) (d)).

The above mentioned **International Judicial Cooperation on Criminal Matters Act** (Act 144/99, of 31 August amended by Act 104/2001, of 25 August) is also of fundamental importance: it applies to the forms of cooperation on criminal matters prescribed therein, namely extradition, transfer of sentenced persons, vigilance and mutual legal assistance on criminal matters (Article 1).

In international relations, the forms of cooperation provided for under Act 144/99 are regulated primarily by international treaties, conventions and agreements binding upon the Portuguese State and, on a subsidiary basis, by the provisions of such Act (Article 3). Whenever no international instrument applies and Act 144/99 is applied on a subsidiary basis, reciprocity is required (Article 4).

This is also the regime provided for under Articles 229 and 233 of the Portuguese Code of Criminal Procedure.

The assistance on criminal matters provided for under Act 144/99 comprises, inter alia, the collection of evidence for purposes of criminal investigation through searches, seizure of property, experts examination and analysis (Article 145).

OPERATIVE PARAGRAPH 2

Sub-paragraph 2. (a)
Refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists

What legislation or other measures are in place to give effect to this sub-paragraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

See previous replies, in particular to subparagraphs 1 (a) and (b).

The Portuguese Criminal Code, in its Article 300 (1), foresees the punishment of "*whoever promotes or establishes a terrorist group, organisation or association, adheres thereto or supports it* [...]", **therefore encompassing all forms of support, both active or passive, to terrorist groups or organisations, namely the recruitment into terrorist organisations and obtaining weapons for terrorist purposes.**

This regime is completed by the provisions of Article 301, which incriminates the acts listed in Article 300 when practiced by a sole person and/or on a singular basis.

Both Articles (300 an 301) are included in the chapter on Crimes against Public Order and Tranquillity of the Portuguese Criminal Code.

The Criminal Code, in Article 300 (2), defines as a terrorist group, organisation or association "*any group of two or more persons who, acting in coordination, aim at jeopardizing national integrity or national independence, preventing, altering or subverting the functioning of State institutions provided for in the Constitution, forcing public authority to practice an act, abstain from practicing it or tolerate its practice, or yet at intimidating certain persons, groups of persons or the general population through the practice of crimes:*

a) Against life, physical integrity or personal freedom;
b) Against the safety of transportations and communications, including telegraphic, telephonic, radio or TV communications;
c) Deliberate creation of common danger, through fire, dissemination of radioactive substances or toxic or suffocating gases, flood or avalanche,

collapse of building, contamination of food and water for human consumption or diffusion of disease, plague or harmful plant or animal;

d) *Of sabotage;*

e) *Which imply the usage of nuclear energy, firearms, explosive substances or devices, firebugs of any kind, trapped parcels or letters."*

The said provisions of the CC were inspired by the European Convention for the Suppression of Terrorism, adopted in Strasbourg on 1977, which Portugal approved for ratification by means of Act 19/81, of 18 August.

Even in the absence of such specific norms on the matter as contained in Articles 300 and 301 of the Criminal Code, the **acts of recruitment into a terrorist organisation** would always be covered by the provisions of Article 299 of the same Code (entitled "Criminal Association").

We reiterate that the Internal Security Act, mentioned in the previous paragraph (Article 16 (3) (d) of Act 20/87) provides for a specific measure which allows police authorities to order the termination of activity of companies, groups, organisations or associations which dedicate themselves to terrorist activities. **This comprises the training of or recruitment of persons into such organisations, or supplying or obtaining weapons for that purpose.**

Portuguese criminal legislation also punishes other criminal conducts generally associated with terrorist activities, such as:

- Crimes of abduction, kidnapping and hostage taking; Crime of capture or hijacking of aircraft, ship or other passenger public transportation means; Crime of sabotage and sabotage against national defence; Crime of computer sabotage – penalties range from 3 to 15 years of imprisonment; and
- The so-called "crimes of common danger" whose penalties equally range from 3 to 15 years of imprisonment.

Regarding ***weapons*** in particular (and although this regime is not exclusive of terrorist crimes), Article 275 (1) of the Criminal Code, amended by virtue of Act 98/2001, of 25 August, punishes with imprisonment between 2 and 5 years the import, manufacture, obtaining through transformation, guard, purchase, sale, transfer or acquisition at any title or by any means, transport, distribution, detention, usage or possession of a weapon classified as war material, prohibited firearm or arm aimed at projecting toxic, suffocating, radioactive or corrosive substances, or explosive or radioactive device or substance, or substance used in the manufacture of toxic or suffocating gases, in violation of legal conditions or contrary to the prescriptions of the competent authority.

Paragraph (2) of this Article aggravates the maximum limit of the prescribed penalty to eight years, in case the acts defined in paragraph (1) concern a device or substance able to cause a nuclear explosion; and

Paragraph (4) of the same Article (drafted pursuant to the accession of Portugal to the European Convention on the Control of the Acquisition and Possession of Firearms by Individuals) punishes with imprisonment of up to one year, or fine, the mere possession of accessories of prohibited firearms, such as silencers, barrels, cylinders, ammunitions and telescopes.

The following legislative instruments also provide for measures aimed at contributing to prevent the supply of weapons to individuals and/or entities likely to use them to commit crimes:

- Decree Law 376/84, of 30 November, which regulates in detail, among other matters, the trade and control of explosives for civilian usage;

- Decree Law 265/94, of 25 April, which transposes into the Portuguese legal system Council Directive 93/15/EEC, complementing the legal framework provided for in the previous Decree Law, namely in what concerns to the essential safety requirements of explosives, their quality certification, placement in the European market and adequate liability in case of violations of its stipulations, for which it establishes fines; and

- Decree Law 39/93, of 3 December, which transposes into the Portuguese legal system Council Directive 91/477/EEC, of 18 June, on control of the acquisition and possession of weapons.

Furthermore, Portugal is a member of several international organisations and agreements that aim at preventing the proliferation and criminal usage of weapons, inter alia, the Nuclear Suppliers Group (NSG), Missile Technology Control Regime Group (MTCG), Australia Group (Chemical and Biological Weapons) and Vassenaar Agreement (Dual-use goods not included in previous groups). Portugal also complies with European and national legislation in force on this matter (namely Regulation (EC) No. 1334/2000 and Decree Law 436/91, of 8 November, respectively).

Portugal has signed, on December 2000, the United Nations Convention against Transnational Organized Crime (Palermo Convention), its process of ratification being presently underway.

Sub-paragraph 2. (b)
Take the necessary steps to prevent the commission of terrorist acts, including by provision of early warning to other States by exchange of information

What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

Since 11 September 2001, all adequate early warning mechanisms of the National System for Internal Safety and Civil Protection were activated. This involves all Security Forces and Services (intelligence, police, in particular the Public Safety Police (PSP) Intervention Corps and Special Operations Group, criminal investigation, foreigners and borders services, maritime and aeronautical authorities) and customs departments.

Presently, the exchange of information at the international level is made, with greater intensity and more in-depth, within the framework of the multilateral and bilateral engagements undertaken by Portugal, inter alia within supranational and international organisations which Portugal is a member of and through the information networks established by or provided for in international instruments (v.g. Interpol and Europol networks and Schengen Information System).

Reference should also be made to the above mentioned Act 5/2002, of 11 January, which establishes a special regime for the collection of evidence (waiving of fiscal secrecy and professional secrecy upon financial institutions, recording of voice and image) and loss of assets in favour of the State, applicable to the crimes of drug trafficking, **terrorism**, traffic in arms, corruption, money laundering, criminal association and other forms of organised criminality.

Sub-paragraph 2. (c)
Deny safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens

What legislation or procedures exist for denying safe haven to terrorists, such as laws for excluding or expelling the types of individuals referred to in this sub-paragraph? It would be helpful if States supplied examples of any relevant action taken.

Sub-paragraph 2. (d)
Prevent those who finance, plan, facilitate or commit terrorist acts from using their respective territories for those purposes against other States or their citizens

What legislation or procedures exist to prevent terrorists acting from your territory against other states or citizens? It would be helpful if States supplied examples of any relevant action taken.

[Joint reply]

See reply to subparagraph 1 (b), particularly the provisions of Articles 300 and 301 of the Criminal Code.

We recall, however, that the application of Portuguese criminal law is governed by the principle of territoriality, complemented by the principles of safeguard of national interests and nationality.

Thus, the Portuguese Criminal Code, as prescribed under its Articles 4 to 7, applies in general to facts occurred in Portuguese territory and, in the absence of international treaty or convention stipulating otherwise, to facts occurred outside national boundaries, inter alia in the case of **crimes of terrorism, terrorist organisation**, crimes against State security or against the Rule of Law.

Decree Law 244/98, of 8 August (as amended by Decree Law 4/2001 of 10 January), establishes the requisites for the entry into, permanence in, exit and removal from Portuguese territory and it foresees several procedures thereto, such as the refusal of entry, expulsion pursuant to administrative or judicial decision and expulsion as accessory penalty (Article 1).

Under this Decree Law the **entry into Portuguese territory shall be refused** to all foreigners who do not fulfil the general legal requisites to be admitted in Portugal, and also to those foreigners who represent a danger or

serious threat for public order, national security or international relations among European Union Member States or States in whose territory the Convention implementing the Schengen Agreement is in force (Article 11).

The refusal of entry into Portuguese territory falls within the competence of the Foreigners and Borders Office (SEF), a security service in charge of enforcing the national policy on immigration and asylum (Article 18).

The **entry into Portuguese territory is also prohibited** to foreign citizens listed as such in the Schengen Information System and in the "national list of not admitted persons" due to (Article 25):

- having been expelled from the country;
- having been sent to other country under a readmission agreement;
- having been condemned to deprivation of liberty of one year or above;
- the existence of strong indication that they practiced serious crimes;
- the existence of strong indication that they intend to practice serious crimes or that they pose a threat to public order, national security or to the international relations of a European Union Member State or State in whose territory the Convention implementing the Schengen Agreement is in force;
- having benefited from the support of the Portuguese State to return to their country of origin on a voluntary basis.

The Foreigners and Borders Office (SEF) shall be consulted prior to the **granting of residence visas**, temporary stay visas and some working permits, or whenever reasons of national interest so determine. However, the Security Information Service (SIS) must be consulted prior to the granting of any visa whenever such **granting is determined by reasons of national security or in conformity with the mechanisms agreed in the framework of the European Common Security Policy (Article 40).**

On the other hand, the Fifth Amendment to the Constitution of the Portuguese Republic (CPR), which entered into force after 11 September, maintains the **prohibition to expel Portuguese citizens** from national territory, in all circumstances, and prescribes that **foreigners** who entered in accordance with law or are legally staying in national territory, obtained residence permit or submitted an asylum request that has not been denied can only be **expelled pursuant to a judicial decision** (Articles 33 (1) and (2) of the CPR).

The requisites to **expel** foreign citizens pursuant to an administrative decision are established in Decree Law 244/98 (as amended by Article 99 of Decree Law 4/2001, of 10 January) and are the following (without prejudice to any international treaty or convention Portugal is a party to):

a) That they entered into or stay in Portuguese territory in an irregular way;
b) That they act against national security, public order or morality;
c) That their presence or activities in the country constitute a threat to the interests or dignity of the Portuguese State or its nationals;
d) That they interfere in an abusive manner in the exercise of the rights of political participation reserved to national citizens;
e) That they practiced acts which, if known by Portuguese authorities, would have prevented its admission into the country.

The same Decree Law establishes that, as a general rule, the **accessory penalty of expulsion** can be applied to:

a) Foreign citizens resident in the country who are condemned to imprisonment of more than one year for the wilful practice of a crime; however, when applying this measure, attention should be paid to the seriousness of the facts practiced by the defendant, potential relapse, degree of insertion into social life, interests of prevention and time of residence in Portugal;

b) Foreign citizens resident in Portugal on a permanent basis, whenever their conduct constitutes a sufficiently serious threat for public order or national security.

However, this accessory penalty shall not be applied to resident foreigners whenever they:
a) Were born in Portugal and have usual place of residence therein;
b) Have minor children resident in Portuguese territory they effectively exercised parental custody over at the time facts were practiced, and to whom they ensure sustenance and education, in case children are to remain below 18 during the time predicted for enforcing the penalty;
c) Are staying in Portugal since they were below ten years of age and have usual place of residence in Portuguese territory.

Concerning the legal framework on **extradition**[2], the Constitution of the Portuguese Republic, pursuant to its Fifth Amendment, establishes an exceptional regime, providing that "*the **extradition of Portuguese citizens** from national territory shall only be admitted, subject to reciprocity guaranteed by an international convention, **in cases of terrorism** and international*

[2] Portugal has ratified the **European Convention on Extradition** and the **Additional Protocols thereto**. These three instruments were approved for ratification by Parliament resolution 23/89, of 21 August. Portugal is also a party to the **European Convention on Mutual Assistance on Criminal Matters**, approved for ratification by Parliament resolution 39/94, of 14 July, and first **Additional Protocol thereto** (approved for ratification by Parliament resolution 49/94, of 12 August). The **Convention on simplified extradition procedure between the Member States of the E.U.**, signed in Brussels on 3 October 1995 and adopted on the basis of Article K.3 of the Treaty on European Union, was ratified by Presidential Decree 41/97, of 18 June – this international instrument derogates the norms provided for under Article 18 (1) of the European Convention on Extradition.

organized criminality, provided that the legal order of the requesting State offers guarantees of a fair and equitable trial" (Article 33 (3) of the CPR).

In general terms, the Portuguese legal framework only admits extradition for crimes to which corresponds, in accordance with the law of the requesting State, penalty or security measure of a perpetual nature or with indefinite duration, subject to reciprocity guaranteed by an international convention, provided that the requesting State offers guarantees that such penalty or security measure shall not be applied or enforced (Article 33 (4) of the CPR).

On the other hand, paragraph 5 of Article 33 establishes that the provisions of the previous paragraphs in the same Article (as described above) "*shall not prejudice the implementation of norms on criminal judicial cooperation adopted within the European Union*". This admits the possibility of applying new mechanisms which are currently under preparation in the European Union, such as the European arrest warrant and subsequent mechanisms to surrender arrested persons.

Finally, Article 33 (6) of the CPR maintains the prohibition to extradite or surrender persons, at any title, due to political reasons or for crimes to which corresponds, in accordance with the law of the requesting State, death penalty or other penalty resulting in irreversible damage to one's physical integrity.

We shall also emphasize that the Portuguese legal system is governed by the principle of *extradite or prosecute*, as provided for under Article 5 of the Criminal Code which establishes:
"*1. [...] Portuguese criminal law shall also apply to facts practiced outside national territory [...]*
e) by foreigners who have been found in Portugal and whose extradition has been requested, whenever the crime committed admits extradition and this cannot be granted.
2. Portuguese criminal law shall also apply to facts committed outside national territory that the Portuguese State undertook to try by virtue of an international treaty or convention."

Finally, we shall make reference to Act 15/98, of 26 March, which establishes the **legal framework on asylum and refugees**:

This Act (Article 3) excludes asylum and provides for the refusal thereof to the following persons:

- Those who have performed any acts that are contrary to the fundamental interests or sovereignty of Portugal;

- Those who have committed crimes against peace, war crimes or crimes against humanity, as defined in the international instruments aimed at preventing such crimes;
- Those who have wilfully committed crimes of common law punishable with more than three years of imprisonment;
- Those who have performed any actions contrary to the purposes and principles of the United Nations.

Once the refugee or exiled status is granted (Articles 2 and 33), the beneficiary is not allowed to (Article 7):

- Interfere, in a manner prohibited by law, in the Portuguese political life;
- Perform activities that might endanger or harm internal or external safety, public order or the relations of Portugal with other States;
- Practice actions contrary to the purposes and principles of the United Nations, or to any treaty or convention Portugal is a party or adheres to.

The right of asylum and, thus, the status of refugee, can be lost, inter alia, in the following cases (Article 36):

- The practice of the acts or activities mentioned in Article 7 (above described) - in this case, the loss of the right of asylum shall also be a ground for expulsion from Portuguese territory;
- The demonstration of falsity in the alleged grounds sustaining the request for asylum, or the existence of facts that, had they been known at the time of granting, would have implied the denial thereof;
- The decision to expel the refugee person taken by a competent court.

The enforcement of a judicial order of expulsion shall be undertaken by the Foreigners and Borders Office (SEF), which must inform thereabout the delegate of the Office of the United Nations High Commissioner for the Refugees and the Portuguese Council for Refugees (Article 48).

Sub-paragraph 2. (e)

Ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that, in addition to any other measures against them, such terrorist acts are established as serious criminal offences in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts

What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts? Please supply examples of any convictions obtained and the sentence given.

See replies to subparagraphs 1. (b) to 1. (d).

Sub-paragraph (f)

Afford one another the greatest measure of assistance in connection with criminal investigations or criminal proceedings relating to the financing or support of terrorist acts, including assistance in obtaining evidence in their possession necessary for the proceedings

What procedures and mechanisms are in place to assist other States? Please provide any available details of how these have been used in practice.

See other replies, in particular to subparagraphs 1. (a) and 3. (a).

Sub-paragraph (g)

Prevent the movement of terrorists or terrorist groups by effective border controls and controls on issuance of identity papers and travel documents, and through measures for preventing counterfeiting, forgery or fraudulent use of identity papers and travel documents

How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc?

The Portuguese system for passport verification and control is in conformity with the recent international recommendations on the security of identity

and travel documents, namely those issued by the European Union and the International Civil Aviation Organization (ICAO).

Portugal also applies directly within its internal order Council Regulation (EC)683/95, which establishes a uniform format for visas issued by EU Member States and candidate countries, and provides for procedures and technical specifications aimed at preventing the production and usage of false or counterfeit visas.

Furthermore, the Foreigners and Borders Office has been paying particular attention to the new Portuguese identity cards and passports.

It should also be emphasised that the Portuguese border posts are equipped with the most recent and advanced devices for detecting document falsifications.

A EU Council Resolution adopted on 27 May 1999 established an early warning mechanism for the exchange of information on illegal immigration and facilitator networks. This system has been frequently used since 11 September 2001.

OPERATIVE PARAGRAPH 3

Sub-paragraph 3. (a)

Find ways of intensifying and accelerating the exchange of operational information, especially regarding actions or movements of terrorist persons or networks; forged or falsified travel documents; traffic in arms, explosives or sensitive materials; use of communications technologies by terrorist groups; and the threat posed by the possession of weapons of mass destruction by terrorist groups

What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this sub-paragraph?

The events of 11 September have raised the awareness of Security Forces and Services, in particular Security Intelligence, for the need to intensify the exchange of information and intelligence among the several national and international bodies involved in the struggle against terrorism.

Meanwhile, the exchange of operational information with US Security Services has increased.

Since 11 September, the NATO Executive Committee has been presented with a weekly evaluation of the threat to internal safety.

National Security Services have also been participating in several meetings aimed at exchanging operational information with similar foreign bodies, within bilateral cooperation protocols previously established and *ad hoc* structures recently created. As an example, we can mention the periodic meetings of the heads of European counter-terrorist units (CTG).

In this context, it should also be noted the permanent contact (24 hours a day) among liaison officers of the several Security Intelligence services; the organisation of joint operations and the harmonization of measures against terrorism by Member States of the EU, namely in what concerns to updating information on, and listing of, terrorist groups or individuals.

Sub-paragraph 3. (b)
Exchange information in accordance with international and domestic law and cooperate on administrative and judicial matters to prevent the commission of terrorist acts

What steps have been taken to exchange information and cooperate in the areas indicated in this sub-paragraph?

See reply to subparagraph 1 (a).

At the national level, the increase in the exchange of operational information is a result of the efforts of the Security Coordination Office[3] (*Gabinete Coordenador de Segurança*). The cooperation among the Security Forces and Services represented in its Permanent Secretariat has been enhanced.

This Office prepares and evaluates weekly documents assessing the threat to internal security posed by terrorism. In this context, particular emphasis was given to the participation of other national entities, namely the aeronautical authority and air operators.

It should be underlined the particular efforts towards the improvement of coordination and resource management in the areas of information research and **prevention of terrorist acts** made by all organs of the National System of Internal Security, which led to the detection of suspicious situations and dissemination of information with operational interest to third parties.

[3] The Security Coordination Office is a specialized consultancy and advisory body for coordinating, at technical and operational levels, the activity of security forces and services. It is composed by the heads of the various Security Forces and Services.

On the other hand, priority has been given to cooperating with countries of origin and transit of migration flows, inter alia on matters such as technical data and information exchange.

Within the European Union and several of its instances (such as the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration – CIREFI - and Europol) the fight against illegal migration and networks supporting it, as well as the use of fraudulent documentation, has been promoted by means of a timely information exchange among EU Member states, Norway, Iceland and candidate countries, through the Early Warning System and other initiatives on migration Liaison Officers.

At the level of international legal assistance, we shall mention, inter alia, the cooperation with Interpol (Act 144/99, of 31 August, amended by Act 104/2001, of 31 August; Decree Law 275-A/2000, of 9 November, amended by Act 103/2001, of 25 August).

On asylum matters, the European Union Member States, through the EU Centre for Information, Discussion and Exchange on Asylum (CIREA), analyse the situation in the countries of origin of asylum seekers and share information on internal legislation and practice concerning asylum.

Since the events of 11 September 2001, EU Members report to the European Commission, on a monthly basis, statistical data on the number and main characteristics of asylum requests submitted by nationals of Afghanistan.

Sub-paragraph 3. (d)
Become parties as soon as possible to the relevant international conventions and protocols relating to terrorism, including the International Convention for the Suppression of the Financing of Terrorism of 9 December 1999

What are your government's intentions regarding signing and/or ratifying the conventions and protocols referred to in this sub-paragraph?

Portugal has signed and ratified ten of the designated set of 12 United Nations Conventions on Terrorism. Both the process of ratification of the International Convention for the Suppression of the Financing of Terrorism (New York, 9. December 1999) and of the accession to the Convention on the Making of Plastic Explosives for the Purpose of Detection (Montreal, 11 March 1991) are currently being pursued at the domestic level.

Sub-paragraph 3. (c)
Cooperate, particularly through bilateral and multilateral arrangements and agreements, to prevent and suppress terrorist attacks and take action against perpetrators of such acts

What steps have been taken to cooperate in the areas indicated in this sub-paragraph?

Sub-paragraph 3. (e)
Increase cooperation and fully implement the relevant international conventions and protocols relating to terrorism and Security Council resolutions 1269 (1999) and 1368 (2001)

Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this sub-paragraph.

[Joint reply]

Portugal developed, within the framework of its relations with third countries, both at multilateral and bilateral levels, a systematic action to build awareness of the need to reinforce international cooperation in the area of counter terrorism.

Within the framework of bilateral relations, this matter was included in the agenda at several levels. At the regional level, mention must be made in this regard to the launching by Portugal of an initiative at the Extraordinary Summit on Terrorism of Ministers of Foreign Affairs of the Mediterranean Forum (24 and 25 October 2001, Agadir).

In all these contacts, the importance of States signing, ratifying, and effectively implementing, international conventions in this area was highlighted. Moreover, the importance of the Global Convention on Terrorism and the added value it represents in international law was also stressed.

Portugal has also taken advantage of its special relation with Portuguese-speaking countries to launch a similar appeal, namely within the institutional framework of the Community of Portuguese Speaking Countries (CPLP). The Declaration of the CPLP on the fight against international terrorism of 31 October 2001 is demonstrative of such an engagement.

As it concerns the African Portuguese-speaking States in particular, Portugal expressed its readiness to assist in the preparation of national legislation to implement international law on terrorism, by way of exchange of information, cooperation among Ministries or other means to be agreed.

In this line, Portugal has made available Portuguese versions of the UN Conventions on Terrorism and promoted cooperation activities in the fields of good governance, justice and home affairs, due to the relevance they assume in this common struggle.

Some of these countries are looking into the Portuguese experience when elaborating their reports to be submitted before UN bodies and preparing their administrations to adopt measures aimed at combating international terrorism.

In the framework of the EU relations with third countries, Portugal played an active role in the diplomatic exercises agreed by the Union, maintaining a regular dialogue with these countries, acting as EU local Presidency in exercise, both in what concerns demarches relating to the Conventions and the assessment of third countries' level of commitment in the fight against international terrorism.

Sub-paragraph 3. (f)

Take appropriate measures in conformity with the relevant provisions of national and international law, including international standards of human rights, before granting refugee status, for the purpose of ensuring that the asylum seeker has not planned, facilitated or participated in the commission of terrorist acts

What legislation, procedures and mechanisms are in place for ensuring asylum seekers have not been involved in terrorist activity before granting refugee status. Please supply examples of any relevant cases.

Sub-paragraph 3. (g)

Ensure, in conformity with international law, that refugee status is not abused by the perpetrators, organizers or facilitators of terrorist acts, and that claims of political motivation are not recognized as grounds for refusing requests for the extradition of alleged terrorists

What procedures are in place to prevent the abuse of refugee status by terrorists? Please provide details of legislation and/or administrative procedures which prevent claims of political motivation being recognised as grounds for refusing requests for the extradition of alleged terrorists. Please supply examples of any relevant cases.

[Joint reply]

See replies to subparagraphs 2 (c) and 2 (d).

Following what was previously said, we reiterate that, pursuant to the Portuguese legal framework on asylum and refugees (previously mentioned Act 15/98, of 26 March), asylum is refused to all those who have committed crimes against peace, war crimes or crimes against humanity, as defined in the international instruments aimed at preventing such crimes; to those who have wilfully committed crimes of common law punishable with more than three years of imprisonment; and to those who have performed any actions contrary to the purposes and principles of the United Nations (Article 3). Therefore, **persons involved in terrorist activities are immediately denied the right to benefit from asylum**.

The purpose of this legal provision is precisely to prevent the abusive usage of the status of refugee, including **by terrorists.**

In order to ensure that such prevention is efficient and comprehensive, the same Act establishes as grounds for losing the right of asylum, and therefore the status of refugee, inter alia, the following (Article 36): performance of activities that might endanger or harm internal or external safety, public order or the relations of Portugal with other States; practice of actions contrary to the purposes and principles of the United Nations, or to any treaty or convention Portugal is a party or accedes to (Article 7); demonstration of falsity in the alleged grounds sustaining the request for asylum, or the existence of facts that, had they been known at the time of granting, would have implied the denial thereof.

Again, this excludes people who are or have been involved in terrorist activities, from the right to be granted asylum and to benefit from refugee status.

We shall recall that the loss of refugee status leads to the expulsion of the refugee from Portuguese territory pursuant to an order issued by a competent court (Article 87) and enforced by the Foreigners and Borders Office (SEF), which should report thereon to the Delegate of the United Nations High Commissioner for Refugees and Portuguese Council for Refugees (Article 48).

On the other hand, the enforcement of Portuguese policy on immigration and asylum falls within the competence of SEF, a body that is competent to refuse the entry into national territory to all those foreigners who represent a danger or serious threat for public order, national security or international relations among European Union Member States or States in whose territory the Convention implementing the Schengen Agreement is in force and, simultaneously, to conduct asylum procedures. This system increases the effectiveness of the fight against the entry of terrorists into Portuguese territory, namely when using refugee status.

In the exercise of its competences concerning asylum, SEF can request expert advice and bases its decisions on justified proposals elaborated by the National Commission for Refugees, a body created within the Ministry for Internal Affairs and composed by lawyers and judicial or public prosecution magistrates having more than ten years in office and classification of merit (Articles 34 and 35).